

## **REMARKS**

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112 and 103(a) is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

### **Information Disclosure Statement**

The examiner asserts that the information disclosure statement filed July 28, 2005, fails to comply with 37 CFR 1.98(a)(1), because the citing of the International Search Report (ISR) on the above-referenced information disclosure statement is improper as the ISR is not considered to be a publication. In response, applicants note that the examiner has initialed the other references listed in the IDS and would appreciate confirmation that the initialed references have been considered and made of record with the next office action.

### **Objections**

The examiner has objected to the disclosure because of the following informalities: the word ".A" appears in claim 1. The period before the "A" is objected to. Applicant is requested to correct this apparent typographical error.

Also, claim 1 is objected to for having an improper period as follows: "a.", "b.", "c.", "d.", and "e." This objection may be overcome by deleting the period following the letters "a," "b," "c," "d," and "e." In response, claim 1 has been amended according to the examiner's kind suggestion.

**35 USC 112**

The examiner has rejected claims 1-6 and 9-17 under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the exemplified compositions comprising a dispersed phase including a first component being capable of chemically reacting with a second component that is different from the first component, assertedly does not reasonably provide enablement for any and all compositions comprising a dispersed phase including any first component, the first component being capable of chemically reacting with any second component that is different from the first, a continuous phase composed of any substantially anhydrous carrier, at least one of any organophilic particle stabilizer in the dispersed phase, wherein the first component is substantially unsolvated in any substantially anhydrous carrier, and any anionic surfactant in a concentration of at least 2% by wt. when the at least one stabilizer consists solely of waxy particles, amphipathic compounds or polymers, or a combination thereof.

In response, applicants have amended independent claim 1 to include the limitation of claim 10 and to further recite that the reaction occurs at 25°C. The skilled person would understand that such reaction occurs under the ambient conditions a user of the inventive cleansing skin care or composition would normally experience in the course of using the composition in washing their body, face, hair and/or hands, etc., with the article in the shower or by the sink. Support for this amendment is found in the instant specification on page 2, line 18-22; page 3, line 37. Substantial reaction is defined in the instant specification on page 7, lines 28 to 30.

Furthermore, applicants respectfully point out that the skilled person would know the identity of other chemical combinations meeting the specific claimed reaction criteria. Nonlimiting examples of selected reactive chemical combinations are described on page 12, lines 18 to page 13, line 8. It is therefore respectfully submitted that claim 1 is in compliance with 35 U.S.C. § 112 first paragraph as illustrated in MPEP 2164.05(b).

Moreover, it is well settled that it is not a requirement to provide an example of every embodiment of the invention encompassed by the claims. In this regard, Applicants have described the invention generically and have provided a description of particular examples of the invention. The particular examples themselves provide for the requisite enablement of the invention, especially commensurate with amended claim 1.

It is noted that broad claims can properly be supported by the disclosure of a single species. *In re Cook* and *Merigold*, 169 USPQ 298 (CCPA 1971). Moreover, in *In re Angstadt* and *Griffen*, 190 USPQ 214, 218 (CCPA 1976), it became well settled that an Applicant does not have to disclose every species covered by a claim. In fact, the Court held that:

“To require such a complete disclosure would apparently necessitate a patent application or applications with “thousands” of examples ... [and] more importantly, such a requirement would force an inventor seeking adequate patent protection to carry out a prohibitive number of actual experiments. This would tend to discourage inventors from filing a patent application in an unpredictable area since the claims would have to be limited to those embodiments which are expressly disclosed.”

In view of the above, and Applicants' amendment which further limit the scope of the reactivity of components 1 and 2, Applicants respectfully submit that the rejection of the claims under 35 USC § 112, paragraph 1, be withdrawn and rendered moot.

### **35 USC 103(a)**

The examiner has rejected claims 1-6, 9-11 and 13-17 under 35 USC § 103(a) as being unpatentable over Beerse, et al., (US Patent 6,294,186). Applicants respectfully traverse this rejection.

Beerse, et al., relates to an antimicrobial composition comprising a benzoic acid analog and a dermatologically acceptable carrier for the benzoic acid analog when complexed with metal wherein the composition has a pH of about 1-7 and is substantially free of a specific organic acid. Applicants respectfully submit that a proper prima facie case under § 103 has not been made out with respect to Beerse, et al., because Beerse at least does not disclose a composition where at least two components of the discontinuous phase may either react with each other when blended with water or at least one component may react with water according to presently amended claim 1.

The examiner has rejected claims 1-6 and 9-17 under 103(a) as being unpatentable over Leyland (GB 2,242,358) in view of Diec, et al., (US Patent 6,607,733). Applicants respectfully traverse this rejection.

Leyland, et al., discloses a cosmetic formulation comprising separate water and oil emulsion and carrier phases. Leyland discloses that certain difficulties may be encountered combining certain ingredients into a single formulation because of their reactivity with each other, for example sodium chloride or sodium pyrrolidone carboxylate contribute to the breakdown of some gel formulations (see page 1, line 20-22). Therefore, it would be desirable to present interactive components in the same formulation while ensuring that the desired reaction only occurred at the site of action not prematurely, for example during manufacture or storage (see page 1, line 19-26). In other words, Leyland, et al., relates to a composition in which a carrier is immiscibly mixed with a water-in-oil emulsion. The emulsion is stabilized using an emulsifier. A component which would otherwise interact with an ingredient found in the carrier is located in the internal water phase of the emulsion (page 1, line 30 to page 2, line 3). Leyland seeks to protect incompatible components within the composition by physically protecting one component within the oily shell of the water-in-oil emulsion. This emulsion is then mixed with a carrier phase containing the other over reactive ingredients. This is achieved either by add mixing, by injection of one phase into the other, or by coextrusion (page 11, lines 15-17). Either of these methods of mixing will disrupt the external oil phase of the emulsion and the carrier so that there is no continuous phase in the final product. Because of this, there can be no anhydrous continuous phase as required in the instant claims as amended. The three phase structure of Leyland, et al., does not disclose or suggest the simple two phase composition of the invention as claimed. Therefore, it is respectfully submitted that a proper prima facie case under § 103(a) has not been made out with respect to Leyland, et al.

In reference to Example 15 of Leyland, the examiner asserts that sodium lauryl ether sulphate is a compound capable of reasonably generating sulfide ions when reacted with an alkaline material and water; that chlorhexidene gluconate is a compound reasonably capable of generating a peroxide compound; that formaldehyde is a compound reasonably capable of producing a gas in aqueous solution when reacted with an acid, e.g., citric acid. In response, applicants respectfully submit that the examiner has not met his burden to establish a proper prima facie case under § 103 by offering facts describing how such reactions would be expected by the skilled person as opposed to bare assertions that they would reasonably occur.

Diec, et al., (US Patent 6,607,733) relates to microemulsion gels based on a microemulsion of the oil and water type in which droplets of the discontinuous oily phase are joined to one another by one or more crosslinking substances and where the molecules are distinguished by at least one hydrophilic region and by at least one hydrophobic region. Applicants respectfully submit that there is no disclosure or suggestion by Diec, et al., of at least a composition where at least two components of a discontinuous phase may either react with each other when blended with water or where at least one component may itself react with water. Therefore, applicants respectfully submit that a proper prima facie case under § 103(a) has not been made out with respect to Diec, et al., either alone or in combination with Leyland, et al.

**Other References Showing the General State of the Art**

Applicants have reviewed the following references offered by the examiner to show the general state of the prior art: Remington's (Remington's Pharmaceutical Sciences. 16<sup>th</sup> ed. (1980); Ha, et al. (US Patent 5,997,887); SaNogueira, Jr., et al. (US Patent 6,174,533); Unger, et al. (US Patent 6,403,065); Robinson, et al. (US Patent 6,492,326); Naser, et al. (US Patent 6,290,943; already made of record by applicant); Oblong, et al. (US Patent 5,939,082); and Patel, et al. (US Patent 6,248,363). Applicant's respectfully submit that neither reference alone or in combination with each other or the other art of record anticipates or renders obvious the instant claims as currently amended.

### **CONCLUSION**

In summary, claim 1 has been amended and claim 10 has been cancelled as being redundant. No new matter has been added.

In light of the above remarks, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

A handwritten signature in cursive script, reading "Alan A. Bornstein". The signature is written in black ink and is positioned above a horizontal line.

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